

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 7:20-CR-167-M-3

JORDAN DUNCAN,

Defendant.

CONTINUATION OF MOTION HEARING
JANUARY 21, 2021
THE HONORABLE CHIEF JUDGE RICHARD E. MYERS II
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

On Behalf of the Government

BARBARA D. KOCHER
United States Attorney's Office - EDNC
150 Fayetteville Street, Suite 2100
Raleigh, North Carolina 27601

On Behalf of the Defendant

RAYMOND C. TARLTON
Tarlton Law Firm
P.O. Box 91624
Raleigh, North Carolina 27675

Risa Kramer, RMR, CRR
Official Court Reporter
United States District Court
Wilmington, North Carolina

TRANSCRIPT OF PROCEEDINGS

(Proceedings commenced at 9:59 a.m.)

THE COURT: If the clerk would please call the case.

THE CLERK: USA versus Jordan Duncan.

THE COURT: Good morning, counsel.

This is the continued detention hearing for Jordan Duncan. The Court continued it to get a presentence -- sorry -- a report from the probation office on the conditions that existed in Mr. Duncan's father's home.

Is there anything further from either party that the Court should be considering as it makes its determination? Anything from the government?

MS. KOCHER: Your Honor, I would like to highlight today a particular thread of argument and evidence that had been made before Judge Gates that was not mentioned at length last week that does go to what I believe is both the risk of flight and the danger.

If I may approach, Your Honor. Marked as Government's Exhibit 2 for the purpose of this hearing, last week having introduced Exhibit 1.

The government has handed up a copy of this defendant's SF-86. I would note, Your Honor, that this is an unredacted version, and I would ask that it remain

1 sealed -- or be sealed.

2 THE COURT: It will be accepted and kept
3 under seal.

4 MS. KOCHER: Thank you, Your Honor.

5 This is the document that all government
6 employees seeking, or asked to take on, a national
7 security position must complete in order to ultimately
8 be adjudged -- assessed and adjudged worthy of a
9 national security position.

10 It acts in the very first instance as a
11 filter, just by the -- the responses on this form filter
12 out, you know, hopefully and potentially persons who
13 would not be appropriate to have a national security
14 position and, ultimately, a security clearance. The
15 instructions are very clear. It sets out that the
16 information is voluntary, although that they -- you
17 know, if the answers aren't given, they can't complete
18 the investigation. Gives the statutory authority, the
19 privacy rights, if any, attached to it. The penalties
20 for inaccurate or false statements are found on page 4;
21 the process through which the applying federal agency
22 would go through to make the final determination of
23 eligibility for that security clearance and so on, Your
24 Honor, the instruction lasting six pages of that form.

25 I turn your attention to pages 38 and 39 of

1 this particular document. I would note, Your Honor,
2 that this document was found in Mr. Duncan's apartment
3 at the search that went down on the day of his arrest,
4 which I think was October 20th of 2020. At the
5 bottom -- this is a version that has been filed online
6 and then printed off. And it says down at the bottom,
7 as each page does, certified at 2020-01-03, so January
8 3rd of 2020.

9 Particularly, on page 38 it asks the
10 applicant whose -- Social Security number, and this is
11 Mr. Duncan's, as earlier pages would indicate.

12 First it asks about the use and misuse of
13 information technology systems; whether the applicant,
14 Mr. Duncan, had ever illegally or without proper
15 authorization accessed or attempted to access any
16 information technology system. The answer is "no."
17 Then it's whether he ever modified, destroyed, or denied
18 others access to information technology. He answers
19 "no." And then finally, and most pertinent, Your Honor,
20 unauthorized and unlawful use in the last seven years,
21 have you introduced, removed, or used hardware,
22 software, or media in connection with any information
23 technology system without authorization when
24 specifically prohibited by rules.

25 Looking on down, then, to the section 29,

1 which is the association record, and the relevant
2 questions then are on the last page of Government's
3 Exhibit 2, page 39. Are you now or have you ever been a
4 member of an organization dedicated to terrorism? The
5 answer is "no." Have you ever knowingly engaged in any
6 acts of terrorism? "No." Have you ever advocated any
7 acts of terrorism or activities designed to overthrow
8 the U.S. government by force? "No." Have you ever been
9 a member of an organization dedicated to the use of
10 violence or force to overthrow the United States
11 governments and which engaged in activities to that end
12 with an awareness of the organization's dedication to
13 that end, or with a specific intent to further such
14 activities? "No."

15 Have you ever been a member of an
16 organization that advocates or practices commission of
17 acts of force or violence to discourage others from
18 exercising their rights? "No." Have you ever knowingly
19 engaged in activities designed to overthrow the U.S.
20 government by force? "No." Have you ever associated
21 with anyone involved in activities to further terrorism?
22 "No." Each lie being a potential count under 18 U.S.C.
23 Section 1001.

24 The significance of that, of those mistruths
25 and lies -- because the evidence presented in terms of

1 this detention hearing sets out significant association
2 with individuals who would cause a "yes" answer to
3 numerous questions in regard to the association
4 questions -- not only did he pass the filter but was
5 granted a top secret security clearance. This goes to,
6 Your Honor, that the conspiracy, the ideology, while not
7 itself important, brought about thoughts and actions
8 specifically predicated on overthrowing the United
9 States government and violent acts to that end.

10 This defendant has shown through his answers
11 on this SF-86 that he's got no respect for the rules
12 that the government would set, that this Court would set
13 for him, and even more importantly, no respect for
14 national security information.

15 And I go on, Your Honor. A number of
16 digital devices were seized at Mr. Duncan's arrest, to
17 include a number of hard drives and a laptop. The
18 government has not yet been able to turn these devices
19 over to defendants in discovery because of a snag. And
20 that snag is in Mr. Duncan's drives, there has been
21 discovered a good bit of material that is documented
22 "FOUO," for official use only, which, while not
23 classified, is not to be possessed personally once the
24 individual leaves the branch and the office and the
25 agency and has no further need of that information.

1 Moreover, there is information that is
2 marked at a classified level, and I would note
3 regardless of where that information came from, if it
4 proves to be classified, it is illegal and in violation
5 of law for this defendant to have possessed it. It
6 would in fact be illegal and another crime for the
7 defendant, say, to lean over to his attorney at this
8 point and even tell him what material it is I'm talking
9 about. Until we are able to further discern whether or
10 not it is in fact classified, that entire drive has to
11 be treated as classified at the level that the labels on
12 the documents indicate they are. It has caused
13 significant difficulty in that review, then, of those
14 devices.

15 Moreover, because of the sharing of the
16 various screen shots of the Instagram accounts, things
17 that you have seen, we can't copy any of the other
18 devices, any of the other defendants' devices until they
19 too are scrubbed and made certain that there is no
20 inappropriate information on those that would be illegal
21 for us to disseminate then further to the defendants.

22 To my point, Your Honor, the "for official
23 use only" information that has been recovered to date
24 from this defendant's drives include a good number of
25 manuals that are marked "Possession of the United States

1 Marine Corps, Second Radio Battalion Student Handbook."
2 There were "for official use information only" files
3 related to urban warfare. There were after-action
4 reports for operation during freedom and insurgent
5 tactics in Afghanistan. There were multiple FOUO
6 detailed maps of U.S. military installations, to include
7 Camp Lejeune's military installation maps, with markings
8 on it that indicated the map was limited in distribution
9 to the Department of Defense personnel only.

10 There was, in fact, several files that
11 related specifically to the handling of classified
12 information and the requirements for it, how to protect
13 it and where it could and could not be housed, which
14 presumably would include not on a personal drive in
15 someone's apartment.

16 Your Honor, there was a manual that
17 appeared -- in fact, it was titled "Ethnic Cleansing
18 Operations U.S. Army." Looked like an Army manual but
19 it was not. It included a chapter on why ethnic
20 cleansing, the pros and cons to weapon systems, and a --
21 sections instructing the reader on how to overtake and
22 use a National Guard armory, and giving the reader the
23 ideas of what equipment that might be found in there, to
24 include supplies, vehicles, ammunition, munitions, and
25 those things.

1 There were more than 1,000 files related to
2 explosives. I would bring -- again, my point being the
3 disrespect for the government -- again, a number of FOUO
4 documents. One in particular that I highlight is an IED
5 awareness guide, Iraq in Afghan. This was FOUO. And
6 specifically marked on it was a destruction notice that
7 that document should be destroyed by any means in order
8 to prevent disclosure of its content or reconstruction
9 of the document.

10 There was a handbook. There was a mega
11 survival e-book collection which was over 2,500 files.
12 And I would bring your attention to a handbook called
13 "The Essential Underground Handbook" which had chapters
14 or sections in it discussing offshore money flow, the
15 jurisdictions and banks, confidential check cashing
16 services, the mail drops in various global providers;
17 second identity chapters to include second passports and
18 citizenship, fake identity documents; a chapter and
19 section on escaping the United States, escaping Canada,
20 and escaping the United Kingdom.

21 I don't believe I mentioned last week that
22 although not found on Mr. Duncan, Mr. Kryscuk actually
23 had a handcuff key sewn in his belt, and that was also
24 one of the documents found in Mr. Duncan's materials,
25 was this ability.

1 Your Honor, the government maintains that
2 the risk of flight that Mr. Duncan presents, both
3 because of his specialized expertise and significant
4 studies in these areas, with his military training and
5 with the view of the United States government that he
6 has and that he has shown, there is no combination of
7 conditions that will satisfy the risk of flight concerns
8 and/or the danger to others.

9 THE COURT: Thank you, counsel. Response?

10 MR. TARLTON: Yes. Briefly, Your Honor.

11 I'd say that the government certainly has
12 not charged Mr. Duncan with terrorism, and for them to
13 argue that asserting "no" on a security clearance to
14 whether he's involved in terrorism is a lie is
15 absolutely unsupported by what they've presented to Your
16 Honor.

17 As to -- we know nothing about -- or I know
18 nothing about, through discovery, this claim that there
19 could be something that was classified on a computer
20 they attribute to my client. But what I think they
21 described to you in detail that they've said are -- is
22 not classified materials are the kinds of publications
23 that are available in the public domain and they -- you
24 see them advertised at gun trade show -- or gun shows
25 and things like that. It's a part of a prepper culture,

1 people prepping in the event that anarchy ensues in
2 society, that they want to be prepared for that. That
3 is, you know, something different than a group that's
4 actively out with a specific plan to actually overthrow
5 the government. The big picture is they have not shown
6 through their presentations that that is actually what
7 was going on as to my client, Your Honor.

8 THE COURT: All right. Thank you,
9 Mr. Tarlton.

10 MR. TARLTON: Yes, Your Honor.

11 THE COURT: All right. I've reviewed all
12 the materials in this case including all the testimony
13 before Judge Gates, the materials that were exhibits
14 before Judge Gates. I've heard extensive testimony here
15 from the government and from Mr. Tarlton. I do believe
16 this to be a close case.

17 At the end of the day, however, and for the
18 reasons stated by Judge Gates, I'm gonna order the
19 continued detention of this defendant pending trial.
20 I'm gonna find that the government has shown by a
21 preponderance of the evidence that there is a
22 significant risk of flight based on the knowledge,
23 training, stated goals of the organization of which the
24 defendant was a member, and it's on that basis that I'm
25 gonna order his detention.

1 The Court also notes for the record that the
2 Pennsylvania supervision capabilities do not include GPS
3 monitoring, so that was not available to the Court as a
4 potential option for this defendant's release.

5 All right. Anything further from the
6 government on this matter?

7 MS. KOCHER: No, Your Honor.

8 THE COURT: Anything further, Mr. Tarlton?

9 MR. TARLTON: Nothing further at this time,
10 Your Honor.

11 THE COURT: Mr. Tarlton, do you need some
12 time with your client?

13 MR. TARLTON: Just briefly, Your Honor.

14 THE COURT: I'll ask the Marshals to arrange
15 that, make that possible so you don't have to do it here
16 inside the courtroom.

17 MR. TARLTON: Thank you, Your Honor.

18 (Proceedings concluded at 10:16 a.m.)

19

20

21

22

23

24

25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Risa A. Kramer

2/7/2024

Risa A. Kramer, RMR, CRR

Date